

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Western District
Name (under which you were convicted): Bonnie Gardner		Docket or Case No.: 09-02-180
Place of Confinement: Federal Prison Camp Akderson		Prisoner No.: 33388-068
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) v. Bonnie Gardner

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

United States District Court

Western District

Grant St Pittsburgh, PA

- (b) Criminal docket or case number (if you know): 09-00180-002

2. (a) Date of the judgment of conviction (if you know):

(b) Date of sentencing: October 18, 2013

3. Length of sentence: 42 months

4. Nature of crime (all counts):

18:1349 Mail and Wire Fraud Conspiracy Ct-1

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

FILED

OCT 23 2014

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court:
- (b) Docket or case number (if you know):
- (c) Result:
- (d) Date of result (if you know): N/A
- (e) Citation to the case (if you know):
- (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

N/A

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

N/A

(4) Nature of the proceeding:

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

N/A

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

N/A

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Attached

PAGES 5-14

GROUND ONE
INEFFECTIVE ASSISTANCE OF COUNSEL

MOVANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE GOVERNMENT FORCED MOVANT'S PRIVATE COUNSEL, MR. TOM FERRELL, TO RECUSE HIMSELF FROM THIS CASE, LEAVING MOVANT WITHOUT EFFECTIVE COUNSEL AT A CRITICAL TIME IN DEFENSE PREPARATION AND NEGOTIATIONS. MOVANT CONTACTED APPROXIMATELY 10 PRIVATE LAW FIRMS IN THE PITTSBURGH AREA BEFORE LOCATING ATTY DIETZ. THE OTHER FIRMS HAD A CONFLICT OF INTEREST AND WERE UNABLE TO OFFER REPRESENTATION. THIS ACTION BY THE GOVERNMENT FORCED THE TRANSFER OF A VERY COMPLEX CASE, OF WHICH ATTY FERRELL HAD SIGNIFICANT KNOWLEDGE, TO MR. DIETZ, WHO HAD NO KNOWLEDGE OF THE STRUCTURE OR FUNCTIONS OF THE BUSINESS ENTITIES INVOLVED IN THE CASE, AND, WHO LATER ILLUSTRATED THAT HE HAD NO INITIATIVE TO ACQUAINT HIMSELF WITH THESE SAID ASPECTS. THIS LACK OF KNOWLEDGE LEFT ATTY DIETZ AT AN EXTREME DISADVANTAGE WHEN ENTERING INTO NEGOTIATIONS FOR THE MOVANT. COUNSEL'S PERFORMANCE WAS SEVERLY UNDERMINED BY INADEQUATE KNOWLEDGE OF THE FACTS, DUE IN PART TO THE TIME FRAME ON WHICH HE ACQUIRED THE CASE, THE COMPLEXITY OF THE CASE, THE EXCESSIVE EXHIBITS PRESENTED BY THE PROSECUTION AND HIS LACK OF INITIATIVE.

GROUND TWO
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FAILED TO PROVIDE PERTINENT INFORMATION RELATED TO PLEA AGREEMENT. WHEN MOVANT WAS OFFERED A PLEA AGREEMENT CONSISTING OF 12 MONTHS OF PROBATION AND NO JAIL TIME, MOVANT HAD SIGNIFICANT CONCERNS REGARDING THE NEED TO APPEAR IN COURT AND PERJURE HERSELF BY TAKING FULL RESPONSIBILITY FOR INVESTMENT FRAUD ACTIONS THAT HAD OCCURRED YEARS BEFORE MOVANT'S EMPLOYMENT WITH THE COMPANY. COUNSEL DID NOT ADVISE MOVANT OF THE AVAILABILITY OF THE ALFORD PLEA, WHICH WOULD HAVE ALLOWED MOVANT TO ACCEPT THE PLEA AGREEMENT WITHOUT RESERVATION. IN SPITE OF REPEATED REQUESTS BY THE MOVANT TO COUNSEL FOR ANY ALTERNATIVES TO COMMITTING PERJURY, THE OPTION OF THE ALFORD PLEA WAS NEVER OFFERED. THE MOVANT SUBSEQUENTLY REFUSING THE PLEA AND RECEIVING 42 MONTHS IN PRISON RATHER THAN 12 MONTHS ON PROBATION CLEARLY ILLUSTRATES PREJUDICE TO THE MOVANT. THE SUBSEQUENT ACCEPTANCE OF THE SECOND PLEA AGREEMENT BY THE MOVANT, WAS INFLUENCED SIGNIFICANTLY BY THE PROSECUTION COMMUNICATING TO COUNSEL THAT HE WOULD SEE HIS CLIENT "DIE IN PRISON". MOVANT AT THAT JUNCTURE FELT THE OPTIONS WERE LIMITED AND THAT THE VINDICTIVE ACT OF THE PROSECUTION WAS SOMETHING THAT COUNSEL WAS NOT WILLING TO ADDRESS THE UNPROFESSIONALISM OF THE ATTITUDE ILLICITED BY THIS TYPE OF REMARK. IN LIGHT OF THAT REVELATION, MOVANT ACCEPTED THE SECOND PLEA AGREEMENT OFFERED, AS IT SEEMED LIKE THE ONLY OPTION OPEN.

GROUND THREE
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL SCHEDULED AN APPOINTMENT ON WEDNESDAY, MARCH 6TH, 2013 WITH MOVANT AND USPS INSPECTORS RANDY HAYDEN AND CAROL AUGUST, TO REVIEW DISCOVERY AND EXHIBIT DOCUMENTS AT USPS HEADQUARTERS. COUNSEL NOTIFIED MOVANT SHORTLY BEFORE THE SCHEDULED MEETING TIME, THAT HE WOULD NOT BE IN ATTENDANCE, LEAVING MOVANT WITHOUT LEGAL REPRESENTATION OR GUIDANCE IN REVIEWING THE MOUNTAIN OF MATERIALS. INSPECTOR RANDY HAYDEN QUESTIONED MOVANT AT THAT TIME REGARDING A TRIP THAT MOVANT HAD TAKEN OUT OF THE COUNTRY. COUNSEL'S ABSENCE RESULTED IN ANOTHER FAILURE TO EVALUATE EVIDENCE AGAINST MOVANT AND TO ESTABLISH DEFENSE STRATEGIES, AS WELL AS PROTECTING MOVANT'S RIGHTS TO NOT BE QUESTIONED WITHOUT AN ATTORNEY PRESENT.

GROUND FOUR
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FAILED TO CONDUCT ADEQUATE INVESTIGATION INTO COMPLEXITIES OF THE CASE OR TO AVAIL HIMSELF OF PRIOR COUNSEL OR EXPERTS WITH EXTENSIVE KNOWLEDGE RELATED TO THE STRUCTURE OF THE ENTITIES INVOLVED. COUNSEL INDICATED THAT HE WOULD HIRE INVESTIGATORS, WHICH NEVER MATERIALIZED. COUNSEL ALSO FAILED TO REVIEW DOCUMENTS PROVIDED BY PREVIOUS COUNSEL WHICH INCLUDED A REPORT FROM AN INDEPENDENT INVESTIGATION FIRM. COUNSEL'S FAILURE TO CONDUCT A REASONABLE INVESTIGATION IN THE FACTS SURROUNDING THIS CASE SEVERELY IMPAIRED HIS EFFECTIVENESS TO EITHER NEGOTIATE A FAVORABLE PLEA OR TO PREPARE FOR TRIAL. ANY STRATEGIC CHOICES MADE AFTER LESS THAN A COMPLETE INVESTIGATION DID NOT PROTECT THE RIGHTS OF THE MOVANT AND DID NOT SUPPORT THE GENERALLY ACCEPTED STANDARDS OF COMPETENCY.

GROUND FIVE
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FAILED TO SCHEDULE CONSULTATIONS WITH MOVANT TO PREPARE FOR DEFENSE, IN SPITE OF REPEATED ATTEMPTS BY MOVANT TO SCHEDULE THE SAME. COUNSEL WAS APPRISED ON AN ALMOST WEEKLY BASIS OF MOVANT'S AVAILABILITY FOR CONSULTATIONS, AND COUNSEL DID NOT MAKE HIMSELF AVAILABLE FOR THESE MEETINGS IN SPITE OF REPEATED REQUESTS BY MOVANT. MOVANT CONTACTED COUNSEL IN NOVEMBER OF 2012, PROPOSING A MEETING SCHEDULE CONSISTING OF 2 MEETINGS PER WEEK, BEGINNING AFTER THE HOLIDAYS, WHICH WOULD ALLOW SUFFICIENT TIME TO REVIEW DOCUMENTS AND DEVELOP DEFENSE STRATEGIES. WHILE COUNSEL VERBALIZED THAT THIS WAS INDEED CRITICAL TO DEFENSE STRATEGY, THE MEETINGS NEVER TOOK PLACE, IN SPITE OF REPEATED PHONE CALLS, EMAILS AND TEXT MESSAGES FROM MOVANT TO COUNSEL REQUESTING THE SAME.

GROUND SIX
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL NEGLECTED TO CONDUCT ANY INTERVIEWS OF POTENTIAL WITNESSES ALTHOUGH HE REQUESTED, AND WAS PROVIDED WITH, AN EXTENSIVE LIST CONTAINING NAMES AND CONTACT INFORMATION. ONE OF THE PEOPLE ON THIS LIST WAS AN ATTORNEY WITH EXTENSIVE KNOWLEDGE OF THE CORPORATE STRUCTURE OF THE ENTITY INVOLVED, AS WELL AS FIRST HAND KNOWLEDGE OF THE FUNCTION OF THE MOVANT WITHIN THE COMPANY. THIS INFORMATION WOULD HAVE SIGNIFICANTLY IMPACTED THE EFFORTS OF COUNSEL AND PROVIDED INSIGHT THAT WAS IMPERATIVE IN DEVELOPING A DEFENSE STRATEGY. THE EXCULPATORY NATURE OF THE INFORMATION THAT WAS AVAILABLE FROM THIS WITNESS LIST WOULD HAVE PROVED BENEFICIAL DURING THE PLEA NEGOTIATIONS AS WELL.

GROUND SEVEN
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL NEGLECTED TO PREPARE AND FILE PRETRIAL MOTIONS IN A TIMELY MANNER, RESULTING IN A SUMMONS TO JUDGE FISCHER'S CHAMBERS FOR ADMONISHMENT. AT THAT TIME, COUNSEL INDICATED TO JUDGE FISCHER THAT DEFENDANT WAS AWARE THAT THE DOCUMENTS WERE DUE, AND THAT THEY HAD NOT BEEN FILED TIMELY, WHICH WAS INCORRECT. MOVANT HAD NO SUCH KNOWLEDGE OF WHAT A PRETRIAL MOTION WAS, NOR OF IT'S NEED TO BE FILED. WHEN JUDGE ASKED THE MOVANT IF SHE WAS AWARE THAT THESE DOCUMENTS WERE DUE, COUNSELOR RESPONDED ON MOVANT'S BEHALF AND SAID "YES". MOVANT DID NOT CHALLENGE COUNSEL'S RESPONSE AT THAT TIME, BUT DID ADDRESS HIS ACTIONS VIA EMAIL AT A LATER TIME. MOVANT WAS ADVISED THAT THIS EVENT WAS NOT SIGNIFICANT, AND THAT IT WAS COMMON PLACE. MOVANT FEELS THAT THIS BEHAVIOR ON THE PART OF COUNSEL--INATTENTIVENESS TO SCHEDULE AND PREPAREDNESS--WAS THE BEGINNING OF A LONG LINE OF SUBSEQUENT INEFFECTIVE ACTIONS THAT SEVERELY IMPACTED THE MOVANT.

GROUND EIGHT
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSELS LACK OF PREPARATION OF EXHIBIT DOCUMENTS DUE FOR ELECTRONIC FILING WITH THE COURT RESULTED IN PREJUDICE FOR THE MOVANT. MOVANT WAS PRESENT IN COUNSEL'S OFFICE, AND IN PREPARING TO LEAVE, ASKED COUNSEL IF THERE WERE ANY PENDING ACTIONS OR SUBMISSIONS APPROACHING THAT NEEDED PREPARED. UPON LOGGING INTO HIS COMPUTER, COUNSEL BECAME AWARE THAT DEFENSE EXHIBITS WERE DUE TO BE FILED THAT DAY, IN LESS THAN 20 MINUTES--MOVANT CANNOT REMEMBER THE EXACT TIME THEY WERE DUE, BUT BELIEVES IT WAS EITHER NOON OR 1 PM. COUNSEL HAD NOTHING PREPARED FOR THIS FILING, AND MOVANT AND COUNSEL FRANTICALLY RIFLED THROUGH SEVERAL BOXES OF FILES, ATTEMPTING TO LOCATE ANY PERTINENT DOCUMENTS THAT COULD BE SUBMITTED. THERE WERE SEVERAL DOCUMENTS THAT COUNSEL HAD PREVIOUSLY INDICATED AS PERTINENT THAT MOVANT AND COUNSEL WERE UNABLE TO LOCATE, AND THUS WERE NOT INCLUDED IN THE FILING. MOVANT PERSONALLY STOOD AND FED A SCANT PILE OF DOCUMENTS INTO COUNSEL'S SCANNER. IN LIGHT OF THE 6000 EXHIBITS FILED BY THE PROSECUTION, THE DEFENSE EXHIBITS NUMBERED LESS THAN 25. THE DOCUMENTS PRESENTED FOR MOVANT'S DEFENSE WERE HASTILY PREPARED AND TRANSMITTED INCOMPLETE. COUNSEL'S LACK OF PREPARATION WAS UNSETTLING, AND MOVANT DISCUSSED COUNSEL'S ACTIONS AT LENGTH WITH ANOTHER ATTORNEY, WHO ADVISED MOVANT TO PETITION FOR NEW COUNSEL. MOVANT WAS RELUCTANT TO PURSUE THIS ACTION IN LIGHT OF THE DIFFICULTY IN OBTAINING COUNSEL IN THE FIRST PLACE, AND DUE TO THE TIMING OF THE ISSUES. MOVANT FELT THERE WERE NO OTHER OPTIONS AVAILABLE AT THAT TIME.

GROUND NINE
INEFFECTIVE ASSISTANCE OF COUNSEL

MOVANT CONTENDS THAT PSR CONTAINS UNSWORN AND UNVERIFIED STATEMENTS OF LOSS THAT WERE INCORRECT AND REPORTED TO THE COURT. THIS INFORMATION WAS THEN UTILIZED IN DETERMINING THE PLEA AGREEMENT AS WELL AS SENTENSING PARAMETERS. COUNSEL FAILED TO VERIFY HOW THE LOSS AMOUNTS WERE VERIFIED AND CALCULATED OR TO QUESTION THE IDENTITY OF SEVERAL NAMES ON THE LIST THAT WERE UNFAMILIAR TO THE MOVANT. MOVANT PROVIDE COUNSEL WITH 2 PERTINENT CASES THAT DEALT WITH CALCULATION OF LOSS IN SIMILAR CIRCUMSTANCES, AND COUNSEL'S RESPONSE WAS THAT TEHY WERE NOT SIMILAR TO MOVANT'S SITUATION. THIS FURTHER SUBSTANTIATED COUNSEL'S LACK OF KNOWLEDGE REGARDING THE CASE. NO FURTHER ACTIONS WERE TAKEN ON THE PART OF COUNSEL TO CORRECT OR VERIFY THE INFORMATION. COUNSEL'S PERCEPTION OF THE IRRELEVANCY OF ERRONEOUS LOSS AMOUNTS AND THE SUBSEQUENT IMPACT OF THAT INFORMATION ON THE MOVANT, WAS NOT A REFLECTION OF SOUND PROFESSIONAL JUDGEMENT.

GROUND TEN
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FAILED TO PROPERLY INSTRUCT MOVANT DURING PLEA NEGOTIATIONS. DURING NEGOTIATIONS OF THE PLEA AGREEMENT, MOVANT REQUESTED THAT COUNSEL NEGOTIATE A SPLIT SENTENCE, WITH HOME DETENTION BEING AN OPTION FOR A PORTION OF THE 42 MONTH PROPOSED SENTENCE. COUNSEL RESPONDED THAT THERE WAS "NO HOME CONFINEMENT WITHIN THE FEDERAL SYSTEM" AND DID NOT PRESENT THIS OPTION TO EITHER THE GOVERNMENT OR TO THE JUDGE. SINCE MOVANT HAD BEEN IN THE COMMUNITY, TOTALLY UNSUPERVISED DURING THE ENTIRE PRE-TRIAL PERIOD, THE LIKELIHOOD THAT A COMMUNITY BASED DETENTION FOR A PORTION OF THE IMPOSED SENTENCE WOULD HAVE BEEN APPROPRIATE. FURTHERMORE, SINCE ONE MEMBER OF THE PROSECUTION TEAM HAD VERBALIZED TO COUNSEL THAT HE DID NOT FEEL THAT JAIL TIME WAS APPROPRIATE, MOVANT FEELS THAT THIS COULD HAVE BEEN INITIATED. COUNSEL'S LACK OF KNOWLEDGE REGARDING THE AVAILABILITY OF SPLIT SENTENCE PROVISIONS RESULTED IN A LESS FAVORABLE OUTCOME FOR THE MOVANT.

GROUND ELEVEN
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL FAILED TO PETITION THE COURT FOR AUTHORIZATION TO RETAIN THE SERVICES OF A PARALEGAL TO ASSIST IN PRINTING AND SORTING THE EXTENSIVE VOLUME OF PROSECUTION EXHIBITS UNTIL THE WEEK BEFORE THE TRIAL WAS SCHEDULED TO BEGIN. COUNSEL'S FAILURE TO ORGANIZE THESE DOCUMENTS PRIOR TO THIS JUNCTURE IN THE PROCEEDINGS SEVERELY UNDERMINED THE EFFECTIVENESS OF ANY STRATEGIC PLANNING OR PLEA NEGOTIATIONS ENTERED INTO ON BEHALF OF THE MOVANT.

GROUND TWELVE
INEFFECTIVE ASSISTANCE OF COUNSEL

MOVANT MADE A REQUEST VIA EMAIL TO COUNSEL FOR ASSISTANCE IN OBTAINING PERTINENT DOCUMENTS AND MATERIALS NECESSARY FOR THE DEFENSE. THIS EMAIL WAS SENT ON NOVEMBER 13, 2012. COUNSEL RESPONDED THAT HE WOULD REQUEST THEM. ONE OF THE ITEMS WAS OF PARTICULAR IMPORTANCE AS IT WAS A VIDEO OF THE OWNER OF THE COMPANY--AND ALSO THE CO-DEFENDENT, DURING A PRESENTATION WHERE HE MADE THE STATEMENT THAT THERE WAS "NO ONE" WITHIN HIS ORGANIZATION WHO KNEW THE ENTIRE SCOPE OF HIS BUSINESS, SO THAT HE COULD "PROTECT HIS" INTELLECTUAL PROPERTIES. THIS PRESENTATION WAS WITNESSED BY ONE OF THE INVESTORS IN THE COMPANY, WHO CAME FORWARD ON MY BEHALF. THESE ITEMS WERE NEVER REQUESTED AND WERE THEREFORE NEVER ENTERED INTO EVIDENCE OR UTILIZED DURING NEGOTIATIONS FOR MOVANT'S PLEA. BY FAILING TO ADEQUATELY INVESTIGATE AND TO PRESENT EXCULPATORY EVIDENCE, COUNSEL WAS INEFFECTIVE IN HIS DECISIONS AND RECOMMENDATIONS TO MOVANT.

GROUND THIRTEEN
INEFFECTIVE ASSISTANCE OF COUNSEL

COUNSEL NEGLECTED TO CHALLENGE INCORRECT INFORMATION ON PSR, SPECIFICALLY RELATED TO RESTITUTION AMOUNTS, AS WELL AS ALLEGED VICTIMS ON HTE LIST WHOSE NAMES WERE UNFAMILIAR TO THE MOVANT. THE RESTITUTION AMOUNTS AS WELL AS THE NAMES WERE CHALLENGED ON SEVERAL OCCASIONS BY THE MOVANT, BUT COUNSEL NEGLECTED TO TAKE ACTION ON THESE CONCERNS. ONE VICTIM LISTED ON THE PSR, LARRY DWOJAK, APPROACHED MOVANT POST-SENTENCING AND STATED THAT HE HAD WITHDRAWN HIS ENTIRE INVESTMENT (APPROX \$106K) PRIOR TO GUZIK LEAVING THE COUNTRY, YET HE IS LISTED ON THE PSR INDICATING A LOSS OF \$106K. MOVANT QUESTIONS VALIDITY OF LOSS AMOUNTS BASED ON THIS GROSS MISREPRESENTATION OF TEH DWOJAK'S LOS AS INDICATED BY THE PROSECUTION. ACCURATE INFORMATION ON THE PSR IS OF VITAL IMPORTANCE NOT ONLY FOR PROPER SENTENCING AND REPAYMENT OF RESTITUTION, BUT ALSO HAS AN IMPACT ON THE INCARCERATED MOVANT DURING LATER STAGES OF THE CORRECTION PROCESS.

GROUND FOURTEEN
INEFFECTIVE ASSISTANCE OF COUNSEL

CALCULATION OF RESTITUTION RELATED TO LOSS WAS INCORRECTLY CALCULATED, AND COUNSEL FAILED TO CHALLENGE THIS INFORMATION. THE SHAREHOLDERS IN THE INVESTMENT GROUP PURCHASED LIMITED PARTNERSHIP INTERESTS THAT WERE BACKED BY REAL ESTATE PROJECTS. THE VALUE OF THE INTERESTS WERE DIRECTLY LINKED TO THE MARKET AND ECONOMY. WHEN THE MARKET BEGAN TO LOSE SIGNIFICANT VALUE BEGINNING IN 2006, THE INHERENT VALUE OF EACH INVESTMENT PORTFOLIO DROPPED ACCORDINGLY. COUNSEL WAS AWARE OF CASE LAW GOVERNING THE CALCULATION METHODS THAT ARE TO BE UTILIZED FOR DETERMINING LOSS, BUT FAILED TO CHALLENGE THE AMOUNTS STIPULATED BY THE PROSECUTION. MOVANT QUESTIONED THE HIGH DOLLAR AMOUNT OF THE LOSS, BUT, AS MOVANT HAD NO ACCESS TO RECORDS TO CONTRADICT THESE DOLLAR AMOUNTS, WAS LEFT AT A DISADVANTAGE. MOVANT BELIEVES THAT THE AMOUNT OF LOSS IS HIGHLY INFLATED FOR THOSE INVESTORS WHO PURCHASED THE LIMITED PARTNERSHIP SHARES, AND THAT THIS INCORRECT INFORMATION HEAVILY IMPACTED THE MOVANT IN A NEGATIVE CAPACITY. IN ADDITION, THERE WERE INVESTORS WHO RECEIVED MONTHLY INTEREST PAYMENTS BASED ON THEIR INVESTMENTS. AGAIN, COUNSEL WAS AWARE OF CASE LAW STIPULATING THAT THE ALLEGED LOSS MUST SHOW THESE PAYMENTS AS A DEDUCTION FROM SAID LOSS TOTALS. THESE INVESTORS SHOULD NOT BE USING THEIR INITIAL INVESTMENT AMOUNTS AS THEIR TOTAL LOSS AMOUNTS. AGAIN, COUNSEL REFUSED TO CHALLENGE THESE FIGURES AND HAVE THEM CORRECTED. THIS INCORRECT INFORMATION WAS INCLUDED IN THE PSR AND RESULTED IN PREJUDICE TO THE MOVANT DURING SENTENCING.

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Movant has limited access to judgment and commitment documents and was unable to ascertain date on which judgment and commitment became final.

MOTION WAS COMPLETED AND PLACED IN PRISON MAILBOX ON OCTOBER 20, 2014.

IF IT PLEASES THE COURT, MOVANT WAS ORIGINALLY SENTENCED ON OCTOBER 18, 2013. THE ONE YEAR ANNIVERSARY DATE FELL ON A SATURDAY, MAKING IT NECESSARY TO WAIT UNTIL THE NEXT BUSINESS DAY TO MAIL THIS DOCUMENT, WHICH IS OCTOBER 20, 2014, THUS MEETING THE STATUTE OF LIMITATIONS DEADLINE.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: COMMUTE SENTENCE TO TIME SERVED.
CORRECT RESTITUTION AMOUNT ERRONEOUSLY REPORTED IN PSR BY RE-
CALCULATING LOSSES OF INVESTORS BASED ON PRIOR CASE LAW; OR PERMIT
or any other relief to which movant may be entitled. MOVANT TO SERVE REMAINING SENTENCE
ON HOME CONFINEMENT.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on October 20, 2014



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

RESPECTFULLY SUBMITTED,



BONNIE GARDNER

#33388-068 A1

ALDERSON FEDERAL PRISON CAMP

PO BOX A

GLEN RAY ROAD

ALDERSON, WV 24910

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A TRUE COPY OF THIS MOTION TO VACATE, SET ASIDE OR CORRECT A SENTENCE PURSUANT TO TITLE 28 U.S.C. §2255 WAS MAILED TO THE FOLLOWING PARTIES OF INTEREST:

BRENDEN CONWAY

OFFICE OF THE UNITED STATES ATTORNEY

FEDERAL COURT HOUSE

700 GRANT STREET ROOM 3110

PITTSBURGH, PA 15219

BY PLACING SAME IN THE MAILBOX PROVIDED FOR INMATES ON THE GROUNDS OF FPC ALDERSON, TO BE MAILED VIA UNITED STATES POSTAL SERVICE.

DATED: October 20, 2014

A handwritten signature in cursive script, appearing to read "Bonnie Gardner", is written over a horizontal line.

BONNIE GARDNER